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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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| In the Matter of | ) | |
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| Revision of Part 22 of the Commission's Rules Governing the Public Mobile Services | ) | CC Docket No. 92-115 |



# REPLY COMMENTS OF McCAW CELLULAR COMMUNICATIONS, INC.

McCAW CELLULAR COMMUNICATIONS, INC.

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## SUMMARY

The record in this proceeding demonstrates that the Commission should take the following actions:

- Require licensees submitting Form 489 minor modification filings involving extensions into an adjacent market to specify whether the five year fill-in period for that market has expired and to certify that the service area boundary extension does not cover any unserved area.
- Adopt a 1:500,000 map scale, with an appropriate transition mechanism.
- Eliminate licensing for inner cell sites, with the Commission maintaining highly accurate information about the external cell sites operated by each cellular carrier.
- Modify the filing requirements for system information updates.
- Promptly act to resolve serious fraud problems affecting the cellular industry as a result of electronic serial number cloning.
- Permit licensees to file Forms 489 to extend service into small pockets of unserved areas in certain defined circumstances.
- Clarify that internal cells in consolidated markets that otherwise would be along the original market border will be treated as an inner cell for FCC notification purposes.
- In connection with the one-time external cell site information filing proposed by the FCC, require licensees to submit copies of the pre-existing Schedule B.
- When an external cell site is removed from service, require the carrier to notify the FCC and provide information necessary to identify the new external cell site facilities.
- Eliminate the filing of SIU data 60 days in advance of the five year fill-in date and instead require a filing only on the date of expiration of the fill-in period.

Both CECR and Comp Comm urge the Commission to impose requirements on cellular carriers that appear to be both wasteful of Commission and licensee resources and without any beneficial use. These burdensome requirements should be rejected by the Commission.

Finally, McCaw addresses certain aspects of the 931 MHz licensing proposal set out by the Commission. First, the Commission necessarily must accord greater flexibility to 931 MHz licensees to relocate facilities and to expand their systems. Therefore, McCaws suggests that the Commission adopt a rule that would consider a licensee's co-channel application within 40 miles of one of its existing sites to be an expansion application not subject to competing applications.

Second, the Commission should implement market-defined service areas for the 931 MHz frequencies. In connection therewith, eligibility for such a licensing area should be based on either: (1) having a pre-determined number of transmitters in operation within the area, or (2) having facilities in operation that serve a pre-determined percentage of the area population.

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McCaw Cellular Communications, Inc. ("McCaw"), by its attorneys, hereby submits it reply to comments concerning the Further Notice of Proposed Rulemaking in the above-captioned proceeding.[1] McCaw's own opening comments in this docket generally supported the Commission's cellular-related proposals, and suggested refinements that would aid in achieving the goals set out in the Further Notice "to eliminate unnecessary information collection requirements, streamline licensing procedures, reduce the processing and review burden on the Commission's staff, and ensure that licensees in the public mobile services are fully qualified to provide service to the public as expeditiously as possible."[2]

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[1] Revision of Part 22 of the Commission's Rules Governing the Public Mobile Services, CC Docket No. 92-115 (May 20, 1994) (Further Notice of Proposed Rulemaking) ("Further Notice"). Opening comments in this docket were filed on June 20, 1994.

[2] Further Notice ¶ 1.

Initially, the opening comments reflected broad-based support for the following Commission proposals also endorsed by McCaw:

- Requiring licensees submitting Form 489 minor modification filings involving extensions into an adjacent market to specify whether the five year fill-in period for that market has expired and to certify that the service area boundary ("SAB") extension does not cover any unserved area.[3]

- Adopting a 1:500,000 map scale, with an appropriate transition mechanism.[4]

- Eliminating licensing for inner cell sites, with the Commission maintaining highly accurate information about the external cell sites operated by each cellular carrier.[5]

- Modifying the filing requirements for system information updates.[6]

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[3] E.g., GTE at 2; NYNEX at 3; Rural Cellular Assn. at 2-3; Vanguard at 4.

[4] E.g., Alltel at 2; Comp Comm at 3; NYNEX at 4; Rural Cellular Assn. at 3-4; SBMS at 1; Vanguard at 5.

[5] E.g., Alltel at 2-3; GTE at 4; New Par at 3; Nextel at 3-4; Rural Cellular Assn. at 4-5; SBMS at 2; Vanguard at 6-8. The Rural Cellular Association proposes that the one time filing proposed by the Commission also include a 1:500,000 scale map depicting the contours of the external cells. McCaw does not believe this filing is necessary. For markets that have already passed their five-year date, the licensee has filed a system information update ("SIU") map. For markets that have not yet reached that date, there seems to be no point in requiring the suggested one time map filing, since the licensee likely will make many modifications to the system at issue.

[6] E.g., NYNEX at 6; Rural Cellular Assn. at 5-6; SBMS at 4; Vanguard at 9-11.

- Promptly resolving serious fraud problems affecting the cellular industry as a result of electronic serial number cloning.[7]

As detailed below, in addition to the recommendations contained in McCaw's opening comments, a number of other commenting parties made suggestions that would lead to further improvements in the cellular licensing processes. McCaw accordingly urges the Commission to adopt such steps. The opening comments also include a few suggestions that should be rejected because they would unnecessarily complicate the regulatory compliance activities of cellular licensees while appearing to serve no valid purpose. Finally, McCaw addresses certain issues related to the Commission's proposals for the licensing of 931 MHz paging facilities.

## I. RULE CHANGES THAT WOULD FURTHER STREAMLINE AND SIMPLIFY THE APPLICATION PROCESS AND CLARIFY CELLULAR SYSTEM STATUS INFORMATION SHOULD BE ADOPTED BY THE COMMISSION

First, Alltel Service Corporation ("Alltel") and Southwestern Bell Mobile Systems ("SBMS") have suggested that the Commission should modify its rules to permit licensees to file Forms 489 extending service into small pockets of unserved areas in certain defined circumstances.[8] Specifically, where the unserved area is less than fifty

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[7] E.g., Alltel at 4; CTIA at 5-6.

[8] See Alltel at 2; SBMS at 5.

square miles,[9] all adjacent markets have passed their five year date, and all adjacent licensees have consented to the application, the Commission should allow the applicant to file a Form 489 and provide service to the small unserved area at any time. Streamlining the unserved area application process in this fashion would serve the public interest in several ways. First, it would reduce the burden on applicants seeking to provide service in these areas while at the same time ensuring that any entity eligible to file to serve the area has voluntarily consented to coverage by the filing licensee. Second, it will expedite the processing and review of applications by Commission staff, thereby conserving limited agency resources. Finally, it will encourage adjacent licensees to sort through border issues among themselves and provide them with incentives to accommodate similar requests from neighbors.

Second, New Par seeks clarification that cells that do not comprise the boundary of the Cellular Geographic Service Area ("CGSA") in markets where the borders have been consolidated are included in the definition of "internal cells" for which no Form 489 filings will be required.[10]

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[9] An unserved area of less than fifty contiguous square miles cannot be the subject of an application for a stand alone cellular system. 47 C.F.R. § 22.924(a)(1) (1993).

[10] New Par at 3.

Where CGSAs in multiple markets have been consolidated into a single service area, all internal cells should be treated comparably and without regard to their location vis-a-vis the original market boundary.

Third, McCaw supports SBMS's request that the FCC clarify that, in connection with the one-time filing of information on external cell sites, licensees should submit the actual pages of the pre-existing Schedule B associated with each of the external cell sites.[11] This will simplify the process of compiling the necessary external cell site information and reduce the burden on licensees. At the same time, the Commission will still be provided with the information it needs in order to establish the basic database of information regarding the outer boundaries of the service areas of cellular systems.

Fourth, NYNEX Corporation ("NYNEX") has recommended that, when an external cell site is taken out of service and the service contour is thereby reduced, carriers should be required to submit information detailing the service area changes and the FCC should make the updated information available to the public.[12] McCaw is in favor of this requirement. Adoption of the NYNEX proposal will ensure that adjacent licensees and other interested persons will have

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[11] SBMS at 3.

[12] NYNEX at 5-6.

access to the most accurate information about the operations of a cellular system and its coverage area. The records maintained by the Commission with respect to external cell sites may become outdated if information on service area shrinkage is not included along with information on increases in the service area coverage.

Fifth, McCaw also supports the clarification requested by SBMS in the context of SIU filings -- "that when a licensee is filing an SIU for an extension into an adjoining market the information required for the SIU need only be provided for sites that extend into the adjacent market.[13] As accurately pointed out by SBMS, maps filed in the absence of this provision may be unduly cumbersome and include unnecessary information.

Sixth, McCaw strongly endorses U S West's proposal to eliminate the filing of SIU data 60 days in advance of a market's five-year fill-in date.[14] While the Commission's original purpose in adopting this advance filing was laudable, there have been intervening rule changes, and practical experience has shown that these filings are often superseded and replaced by subsequent SIU filings closer to the date of the fill-in period expiration. As a result, the 60 day advance filings are confusing to other carriers and to

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[13] SBMS at 4.

[14] U S West at 2-5.

entities potentially interested in submitting unserved area applications. Unserved area proposals based on these filings in many cases must be substantially revised as the licensee makes further system revisions through the remainder of its protected fill-in period. The current rule thus should be replaced with a required SIU filing on or before the date the five-year fill-in period in fact expires.

## II. CERTAIN PROPOSALS MADE BY CECR AND COMP COMM WOULD *DISSERVE THE PUBLIC INTEREST AND SHOULD BE REJECTED*

In contrast to the policies being pursued by the Commission in this proceeding, the Committee for Effective Cellular Rules ("CECR") seeks to impose burdensome obligations on cellular licensees that would serve no valid public interest purpose. CECR's position must be evaluated in the context of its clear intent to support policies that enhance the efforts of its members to prepare multiple unserved cellular area applications at minimum expense.

CECR argues in favor of continued licensing of interior cell sites.[15] It also urges the Commission to require inner cell information to be marked and identified in the SIU maps, to aid in determining a carrier's "lawful" coverage at the end of its five-year fill-in period.[16] Finally, CECR once

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[15] CECR at 2-4.

[16] Id. at 5.

again requests that the Commission require, as part of the SIU filing, the submission of a date-stamped Form 489 for each of the external cell sites.[17]

Despite CECR's claims, it offers no valid public interest rationale for imposing these unnecessary regulatory burdens on both licensees and Commission staff and resources. The Commission has sufficient tools to enforce carrier obligations to comply with rules governing the operation of cellular systems. Moreover, the rationales claimed by CECR simply do not derive from the conditions it seeks to impose. For example, internal cell sites by definition do not govern a licensee's coverage area, and there thus is no purpose in requiring information on each such site for the purpose of assessing a carrier's "lawful" service area. Similarly, the Commission has previously rejected CECR's attempt to force licensees to refile information (copies of the stamped Forms 489) that already exists in the Commission's files when submitting their SIU filings.[18]

Comp Comm likewise proposes to impose a new submission of information, which requirement does not appear to be necessary. Specifically, Comp Comm urges the Commission to

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[17] Id. at 5-6.

[18] Amendment of Part 22 of the Commission's Rules To Provide for Filing and Processing of Applications for Unserved Areas in the Cellular Service and To Modify Other Cellular Rules, 8 FCC Rcd 1363, 1365 (1993).

require an annual accounting differentiating cells as external or internal and including a one-page table of parameters for each transmitter site.[19] This requirement could be exceptionally burdensome on carriers with large number of cells in their systems. Moreover, with the establishment of the Commission's database for monitoring the external sites of cellular systems, there appears to be no basis for imposing the burden proposed by Comp Comm.

## III. THE PROCESSING OF 931 MHz APPLICATIONS CAN BE SUBSTANTIALLY STREAMLINED TO RELIEVE THE BURDENS ON LICENSEES AND THE COMMISSION

### A. Two Kilometer Rule

A number of parties filing comments in this proceeding opposed the Commission's proposal to narrow substantially the definition of a modification application to consider a transmitter move that is more than 2 kilometers[20] a "new" or "initial" application. The predominant argument against such a rule is that it limits an operator's flexibility to make changes to its system configuration. This is especially true when, through no fault of the

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[19] Comp Comm at 4.

[20] The Further Notice provides the distance in kilometers (2) or miles (1.6). However, 2 kilometers is not 1.6 miles. To avoid confusion McCaw requests that the Commission express distance either in kilometers or miles but not both.

licensee, a site must be relocated because a lease is lost or canceled. Also, the rule would needlessly limit the ability of a licensee to gracefully expand its system to accommodate growth since virtually any new co-channel application filed by an existing licensee would cause such an application to be subject to mutually exclusive applications.

Because the strict 20 mile reliable service area contour ("RSAC") of 931 MHz paging facilities precludes 931 MHz licensees from making minor changes to the location of exterior sites, McCaw supports that aspect of the 2 kilometer rule that would allow a licensee to relocate 931 MHz facilities that are less than 2 kilometers from an existing location by filing a notification. Establishment of such a policy would give 931 MHz licensees some flexibility to reconfigure their systems and avoid disruption of service to subscribers in the event circumstance beyond their control caused a site loss. However, McCaw's support for such a proposal is contingent upon the Commission providing 931 MHz licensees with the ability to gracefully expand their systems. To accomplish this, McCaw suggests the Commission adopt a rule that would consider a licensee's co-channel application within 40 miles of one of its existing sites to be an expansion application not subject to competing applications.

The proposal set forth above would provide 931 MHz system operators with flexibility to make minor changes to 931 MHz systems without disrupting service to the public, and it also would ensure that 931 MHz licensees could expand operations to accommodate increasing demand for wide-area systems.

B. Market-Defined Service Areas

A long term solution to the problem of how the Commission can provide more flexibility to allow 931 MHz paging licensees to make minor changes to their systems and yet expand operations to accommodate natural growth is to license 931 MHz paging facilities on a market-defined service area determined by the Commission. McCaw fully supports the comments of many parties who argued for such market-defined service areas.[21]

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[21] McCaw notes that Premier Page, Inc. submitted comments in this proceeding providing the Commission with a means of processing 931 MHz applications. Included in its processing plan is a proposed definition of when a channel should be considered "available" for purposes of licensing wide-area paging systems. Premier Page asserts that "(a) channel that discontinued operation after the application was filed should not be considered available to that particular applicant." Premier Page at 8. McCaw submits that this aspect of Premier Page's proposed definition for channel availability is flawed because it is ambiguous. For example, it is not clear whether it would include authorized but unconstructed 931 MHz facilities or only facilities that were authorized, constructed, made operational and then discontinued. In either event, Premier Page's definition of this aspect of channel availability does not take into

(continued...)

Regardless of the size of the geographic area on which a market-defined license might be based for 931 MHz paging systems, McCaw believes eligibility for such licenses should not be tied solely to the number of transmitters a licensee has in a given geographic area. Rather, eligibility for a market-defined area should be based on (1) having a pre-determined number of a transmitters in operation within the area or (2) having facilities in operation that serve a pre-determined percentage of the population of the area. Establishing eligibility based strictly on the number of transmitters in operation might cause licensees to build unnecessary facilities (the costs of which will ultimately be borne by customers) merely to qualify for a market-wide license. Similarly, establishing eligibility based on a minimum number of transmitters in operation could be prejudicial to operators in less populated areas where fewer than the required minimum number of transmitters in operation might provide coverage to a very substantial percentage of the population of the market-defined area in question. Accordingly, McCaw requests that, in establishing market-defined service areas, rules should be adopted that take into

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[21](...continued)
consideration that there may have been valid business reasons for not constructing or discontinuing operation of a 931 MHz facility. In short, Premier Page's definition of channel availability is too severe.

account such factors and that are equitable under all circumstances.

## IV. CONCLUSION

Adoption of the proposes outlined in the Further Notice, as modified and supplemented consistent with the suggestions set forth in McCaw's opening comments and endorsed above will assist the Commission to achieve the purposes underlying the initiation of the Part 22 rewrite proceeding. As such the requested action will further the public interest.

Respectfully submitted,

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